

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

DOUGLAS W. CARY
REG # 38777-044

PLAINTIFF

v.

2:15CV00065-KGB-JJV

USA

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Kristine G. Baker. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial

evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff, Douglas W. Cary, filed this section 1983 action on April 23, 2015. (Doc. No. 1.) He did not, however, file an Application to Proceed Without Prepayment of Fees and Affidavit or pay the statutory filing fee. Accordingly, on April 29, 2015, the Court entered an Order directing Plaintiff to either file an Application to Proceed Without Prepayment of Fees and Affidavit or pay the statutory filing fee. (Doc. No. 2.) Plaintiff was warned that his failure to comply with the Court’s Order within thirty days would result in the dismissal of this action pursuant to Local Rule 5.5(c)(2). (*Id.* at 2.)¹

Now, in excess of thirty days have passed since the Court entered the aforementioned Order. Plaintiff has not complied or otherwise responded. Accordingly, the Court finds that Plaintiff has failed to comply with Local Rule of the Court 5.5(c)(2), and it recommends that this action be

¹Local Rule of the Court 5.5(c)(2), states:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Loc. R. 5.5(c)(2).

dismissed.

IT IS, THEREFORE, RECOMMENDED THAT:

1. Plaintiff's Complaint (Doc. No. 1) be DISMISSED without prejudice.
2. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting these recommendations would not be taken in good faith.

Dated this 22nd day of June, 2015.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE